

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MAGED HANNA,

Petitioner

v.

JOHN ASHCROFT, U.S. ATTORNEY
GENERAL, ET AL.

Respondent

)
) 2004 JAN 26 P 4:10
)

) Civil Action No.
) 04cv10121-GAO
)

)
)
)

RESPONDENT'S RETURN AND MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS

Respondent¹ moves to dismiss this case because although petitioner has challenged his continuing detention by respondent, he has now been released from respondent's custody, on January 20, 2004. See Attachment A.

Accordingly, since the relief sought by petitioner has now been granted by respondent, the case should be dismissed as moot.

¹ The Immigration and Naturalization Service of the United States Department of Justice was "abolished" by section 471 of the Homeland Security Act of 2002, Pub. L. 107-296, tit. IV, subtit. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002) ("HSA"). Most of the interior enforcement functions of the former INS were transferred to the Department of Homeland Security ("DHS"), Directorate of Border and Transportation Security, Bureau of Immigration and Customs Enforcement. These changes were effective March 1, 2003. The responsive successor official of the Department of Homeland Security in the instant action is Interim Field Office Director Bruce Chadbourne for the Bureau of Immigration and Customs Enforcement in Boston, Massachusetts.

ARGUMENT

I. PETITIONER HAS BEEN RELEASED FROM RESPONDENT'S CUSTODY AND THEREFORE THE CASE SHOULD BE DISMISSED FOR MOOTNESS.

"It is well settled that a case is moot 'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome, ... or alternatively, when the 'party invoking federal court jurisdiction' no longer has 'a personal stake in the outcome of the controversy.'" Boston & Maine Corp. v. Brotherhood of Maintenance of Way Employees, 94 F.3d 15, 20 (1st Cir. 1996) (citations omitted).

"A case is moot, and hence not justiciable, if the passage of time has caused it completely to lose its character as a present, live controversy of the kind that must exist if the court is to avoid advisory opinions on abstract propositions of law." Laurence H. Tribe, American Constitutional Law S 3-11, at 83 (2d ed. 1988) (internal quotations omitted). Once a case or controversy is moot, a federal court no longer retains jurisdiction to adjudicate the merits of the case. U.S. Const. art. III, S. 2 et seq.; see also U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 115 S.Ct. 386, 390 (1994).

Because the result sought in the petition -- release from the custody of the Department of Homeland Security -- has now been effected by petitioner's release from custody on January 20, 2004, there is no live case or controversy and accordingly

the petition should be dismissed as moot.

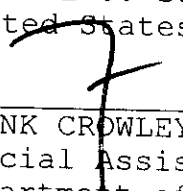
CONCLUSION

Because there is no present case or controversy, this action should be dismissed for mootness.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By:


FRANK CROWLEY
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ATTACHMENT A



U.S. Department of Homeland Security
Immigration & Customs Enforcement
Detention & Removal Operations
New England Field Division

JFK Federal Building
Government Center
Boston, MA 02203
January 15, 2004

HANNA, Maged A 77714476
C/O PLYMOUTH COUNTY H OF C

Release Notification

Upon review of your case, Immigration and Customs Enforcement (ICE) has concluded that you may be released from ICE custody pending your removal from the United States. This release does not effect your removal order and does not constitute an admission to the United States.

Your release will be subject to certain written conditions that will be provided to you shortly, and by which you must abide. A violation of one of more of these conditions, or of any local, state or federal law may result in your being taken back into custody and any bond which you may have posted being forfeited. Your release from custody is also conditioned upon your maintaining proper behavior while sponsorship and placement efforts for you are being undertaken.

Prior to your release from custody, a ICE officer will verify the sponsorship or employment offers presented during your review. Please forward any additional information regarding potential sponsoring family members or non-governmental organizations who may be willing to assist you upon release.

It is particularly important that you keep the ICE advised of your address at all times. We will continue to make efforts to obtain your travel document that will allow the United States government to carry out your removal pursuant to your order of deportation, exclusion, or removal. In addition, you are required by law to continue to make good faith efforts to secure a travel document on your own. Once a travel document is obtained, you will be required to surrender to the ICE for removal. You will, at that time, be given an opportunity to prepare for an orderly departure.


Bruce H. Chadbourne, Interim Field Office Director

1/26/2004
Date

U.S. Department of Homeland Security
Immigration & Customs Enforcement

Order of Supervision

File No: _____
Date: 01-15-04

HANNA, Maged A 77714476

Name: _____

On 10-18-00, you were ordered:
(Date of final order)

- ☐ Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
☒ Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the Service has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

- ☒ That you appear in person at the time and place specified, upon each and every request of the Service, for identification and for deportation or removal.
- ☒ That upon request of the Service, you appear for medical or psychiatric examination at the expense of the United States Government.
- ☒ That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as the Service considers appropriate.
- ☒ That you do not travel outside Boston District Office for more than 48 hours without first
(Specify geographic limits, if any)
having notified this Service office of the dates and places of such proposed travel.
- ☒ That you furnish written notice to this Service office of any change of residence or employment within 48 hours of such change.
- ☐ That you report in person on the 1st business day of every month to this Service office at:
FK Bldg Government Center, Room 1775, Boston, Ma 02203 unless you are granted written permission to report on another date.
- ☒ That you assist the Immigration and Naturalization Service in obtaining any necessary travel documents.
- ☐ Other: _____
- ☒ See attached sheet containing other specified conditions (Continue on separate sheet if required)

(Signature of INS official)

Timothy T. Stevens
(Print name and title of INS official)

Alien's Acknowledgment of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the _____ language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

Patrick E. Mullen IEA
(Signature of INS official serving order)

X MAGED HANNA
(Signature of alien)

01-20-04
Date

U.S. Department of Homeland Security
Immigration & Customs Enforcement

Order of Supervision-Addendum

Name: HANNA Maged A 77714476

File No: _____
Date: 01-15-04

- ☒] That you do not associate with known gang members, criminal associates, or be associated with any such activity.
- ☐] That you register in a substance abuse program within 14 days and provide the INS with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.
- ☐] That you register in a sexual deviancy counseling program within 14 days and provide the INS with written proof of such within 30 days. You must provide the INS with the name of the program, the address of the program, duration and objectives of the program as well as the name of a counselor.
- ☐] That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide the INS with written proof of such within 10 days.
- ☒] That you do not commit any crimes while on this Order of Supervision.
- ☒] That you report to any parole or probation officer as required within 5 business days and provide the INS with written verification of the officers name, address, telephone number, and reporting requirements.
- ☒] That you continue to follow any prescribed doctors orders whether medical or psychological including taking prescribed medications.
- ☒] That you provide the INS with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.
- ☒] That you provide the INS with written responses from the Embassy or Consulate regarding your request.
- ☒] Any violation of the above conditions will may result in revocation of your employment authorization document.
- ☒] Any violation of these conditions may result in you being taken into Service custody and you being criminally prosecuted.
- ☐] Other.

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Decision of Post Order Custody Review - Release
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HANNA, Maged A 77714476

PROOF OF SERVICE

(1) Personal Service (Officer to complete both (a) and (b) below.)

(a) I Patrick E. Muller I.E.A.
Name of ICE Officer Title
certify that I served HANNA, MAGED A
Name of detainee
this document at BOSTON, MA S.BAY S.O. on 01-20-04 at 1855 hrs
Institution Date Time

(b) I certify that I served the custodian _____
Title _____ at _____ Name of Official _____
_____ with a copy of this document. _____ on _____
Date Institution

OR

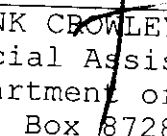
(2) Service by certified mail, return receipt. (Attach copy of receipt)

I _____
Name of ICE Officer
that I served _____ and the custodian _____ Title _____
Name of detainee
with a copy of this document by certified mail at _____ Name of Official _____
Institution on _____ Date _____

() cc: Attorney of Record or Designated Representative
() cc: A-File

CERTIFICATE OF SERVICE

I hereby certify that I caused true copy of the above document to be served upon counsel for petitioner by mail on January 26, 2004.


FRANK CROWLEY
Special Assistant U.S. Attorney
Department of Homeland Security
P.O. Box 8728
J.F.K. Station
Boston, MA 02114